

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

UNITED STATES OF AMERICA)	Criminal Case No. 3:10cr00035-1
)	
v.)	2255 MEMORANDUM OPINION
)	
ESTEBAN SALMERON-DUQUE,)	By: Norman K. Moon
Petitioner.)	United States District Judge

Esteban Salmeron-Duque, a federal inmate proceeding *pro se*, filed a motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255, challenging his 2011 conviction and sentence. Upon review of the record, however, I conclude that the § 2255 motion must be dismissed as an unauthorized, successive motion.

Salmeron-Duque challenges his 180-month sentence for conspiring to distribute 500 grams or more of methamphetamine, in violation of 21 U.S.C. § 846. Court records indicate that Salmeron-Duque previously filed a § 2255 motion regarding the same conviction and sentence, which I dismissed. *See* Docket Nos. 96, 108, and 109. I may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that the claims in the motion meet certain criteria.¹ *See* § 2255(h). As Salmeron-Duque has not submitted any evidence of having obtained certification from the Court of Appeals to file a second or successive § 2255 motion, I must dismiss his motion without prejudice as successive.²

¹ I note that in *United States v. Hairston*, No. 12-8096, 2014 U.S. App. LEXIS 10846, 2014 WL 2600057 (4th Cir. June 11, 2014), the Fourth Circuit held that “a numerically second § 2255 motion should not be considered second or successive pursuant to § 2255(h) where . . . the facts relied on by the movant seeking resentencing did not exist when the numerically first motion was filed and adjudicated.” *Cf.* 28 U.S.C. § 2255(h). In the instant matter, however, there are no new facts upon which Salmeron-Duque is relying and, thus, *Hairston* is inapplicable.

² Petitioner is hereby advised of the procedure for obtaining certification from the United States Court of Appeals for the Fourth Circuit to have this court review a successive § 2255 motion. Petitioner must submit a copy of the successive § 2255 motion to the Court of Appeals, along with a motion requesting a three-judge panel certification that the district court may review the successive § 2255 motion. 28 U.S.C. § 2244. A Fourth

ENTER: This 21st day of April, 2015.



NORMAN K. MOON
UNITED STATES DISTRICT JUDGE

Circuit form and instructions for filing this motion are available from the Fourth Circuit at the following address:
Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 900 E. Main St, Richmond, VA 23219.